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**OFFICE OF PETITIONS**

In re Application of :  
Glanzer et al. :  
Application No. 10/826,576 : DECISION  
Filed: April 16, 2004 : ON PETITION  
Atty Docket No. 33203/US/2 :  
:

This is a decision on the "PETITION TO CORRECT PRIORITY CLAIM UNDER 37 C.F.R. §§ 1.78(a)(1-3) and 1.17(t)," filed April 28, 2005, to accept an unintentionally delayed claims under 35 U.S.C. 120 for the benefit of priority to prior-filed nonprovisional Application nos. 10/453,596, 10/160,094, and 08/916,178.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. §§ 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed on April 16, 2004, and was pending at the time of the filing of the instant petition. On petition, references to the prior-filed nonprovisional applications have been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii). This amendment<sup>1</sup> was filed with the petition on April 28, 2005. The petition includes payment of the surcharge under § 1.17(t). Petitioner states that "delay in claiming priority under 37 CFR § 1.78(a)(5)(ii) was entirely unintentional." Despite its reference to (a)(5) rather than (a)(2) of 1.78, this statement is being construed as the required statement of unintentional delay. Petitioner must advise the Office if this interpretation is incorrect.

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the references to the prior-filed applications were submitted during the pendency of the instant nonprovisional application. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed applications. In order for the instant application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met.


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<sup>1</sup> This amendment is acceptable despite the inclusion of an incorporation by reference statement, because the application as filed included a statement incorporating by reference prior application Nos. 10/453,596, 10/160,094 (now Patent No. 6,594,530) and 08/916,178 (now Patent No. 6,424,872) on page 2 of the specification.

Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider these benefit claims and determine whether the instant application is entitled to the benefit of the earlier filing date.

This application is being forwarded to Technology Center Art Unit 2121 for consideration by the Examiner of applicant's claim under 35 U.S.C. § 120, and 37 CFR 1.78(a)(1) and (2) for the benefit of priority to the prior-filed applications.

Telephone inquiries concerning this matter should be directed to Senior Petitions Attorney Nancy Johnson at (571) 272-3219.

  
Frances Hicks  
Petitions Examiner  
Office of Petitions

Enclosure: Corrected Filing Receipt